

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-208435

DATE: November 15, 1982

MATTER OF: Richard D. Orson

## DIGEST:

Where bidder submits bid bond documents containing signatures of individual sureties reproduced on bid form prior to completion of form, contracting officer properly rejected bid as nonresponsive because surety could argue after bid opening that it never agreed to be bound on bond.

Richard D. Orson protests the rejection of his low bid under United States Department of Agriculture, Forest Service, invitation for bids No. R6-82-110C for the construction and reconstruction of Grizzly Peak Roads 383 and 383.300. Orson states his bid was rejected by the contracting officer for a "very insignificant technicality" resulting from Orson's submission of photocopied bid bonds. The Forest Service determined the bid to be nonresponsive for failure to include an acceptable bid guarantee.

We agree with the Forest Service and deny the protest.

The invitation required a bid guarantee be submitted with the bid. Orson's bid included bid bonds on reproductions of Standard Form 24, Bid Bond, June 1964 edition. Upon review of Orson's bid submission, the contracting officer determined that the bond form was a photocopy of the form with the sureties' signatures affixed thereto prior to photocopying and that the blocks above the individual sureties' signature blocks were completed after the sureties had signed the form and it was photocopied. In addition to the bid bond form, reproductions of completed Standard Form 28, Affidavit of Individual Surety, were submitted for each of the individual sureties. A copy of the reverse of the affidavit form, Certificate of Sufficiency, was submitted on a separate sheet of paper. The contracting officer concluded, therefore, that the sureties had no knowledge of the specific bid bond and did not even know the amount of the bond.

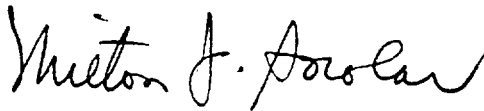
Orson states he informed the contracting officer that his sureties were unavailable at the time of bidding and that they had in the past suggested that he use a copy of the standard form with the sureties' signatures already attached. Orson states the deviation in surety signatures should be waived and that he be allowed to correct the forms. He relies on 52 Comp. Gen. 184 (1972) where we concluded contracting officials could ascertain the acceptability of an individual surety after bid opening. However, that case concerned the net worth of a surety, and the issue before us here is whether the Government received the bid guarantee required by the invitation due to the form of the bonding documents.

Generally, suretyship arises only by the express agreement of the surety to be bound on behalf of the principal. Long's Air Conditioning, Inc., B-187566, January 6, 1977, 77-1 CPD 11. Whether or not the essential agreement by the surety occurred in this case is called into question because of the unusual form of the bonding documents and the manner in which the sureties are identified. Orson's use of photocopied, presigned documents casts serious doubt as to whether an agreement between surety and principal ever arose before bidding on this contract. In our opinion, the surety is in a position to argue after bid opening that it never agreed to bond Orson and that the bonding document was executed without the knowledge of the surety. In short, we agree with the contracting officer that at the time of bid opening, there was uncertainty as to whether the sureties intended to be bound and that the Government would receive the bid guarantee required by the solicitation.

Our Office has consistently held that the requirement for a bid guarantee or bond is a material requirement which cannot be waived. See 38 Comp. Gen. 532 (1959) and B-175477, August 3, 1972. Waivable deviations from full compliance with bid bond requirements may not be of a character which would result in the Government obtaining less than the same full and complete protection as it would have under a bond in complete conformity. See B-167787, November 4, 1969. Orson's bond is unusual in form in that

presigned photocopies of the forms with the sureties' signatures were used in bidding. Since there is uncertainty as to whether the surety actually intended at the time of the bid opening to bond Orson, we must conclude that the rejection of Orson's bid was required.

The protest is denied.

*for*   
Comptroller General  
of the United States